

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JAMES MICHAEL FAYED,

No. 2:21-CV-2141-DMC-P

Plaintiff,

V.

KATHLEEN ALLISON, et al.,

ORDER

Defendants.

Plaintiff, a prisoner proceeding pro se, brings this civil rights action pursuant to 42 U.S.C. § 1983. Pending before the Court is Plaintiff's motion for the appointment of counsel, ECF No. 15.

The United States Supreme Court has ruled that district courts lack authority to require counsel to represent indigent prisoners in § 1983 cases. See Mallard v. United States Dist. Court, 490 U.S. 296, 298 (1989). In certain exceptional circumstances, the court may request the voluntary assistance of counsel pursuant to 28 U.S.C. § 1915(e)(1). See Terrell v. Brewer, 935 F.2d 1015, 1017 (9th Cir. 1991); Wood v. Housewright, 900 F.2d 1332, 1335-36 (9th Cir. 1990). A finding of “exceptional circumstances” requires an evaluation of both the likelihood of success on the merits and the ability of the plaintiff to articulate his claims on his own in light of the complexity of the legal issues involved. See Terrell, 935 F.2d at 1017. Neither factor is dispositive and both must be viewed together before reaching a decision. See *id.* In Terrell, the

1 Ninth Circuit concluded the district court did not abuse its discretion with respect to appointment
2 of counsel because:

3 . . . Terrell demonstrated sufficient writing ability and legal knowledge to
4 articulate his claim. The facts he alleged and the issues he raised were not
5 of substantial complexity. The compelling evidence against Terrell made it
extremely unlikely that he would succeed on the merits.

6 *Id.* at 1017.

7 In the present case, the Court does not at this time find the required exceptional
8 circumstances. Plaintiff states that appointment of counsel is warranted because: (1) he is
9 indigent; (2) he has limited and inadequate prison law library access; (3) his case has merit; and
10 (4) the case will likely involve extensive and complicated discovery; and (5) it is unfair to require
11 him to proceed pro se against defendants who will have access to experienced counsel. See ECF
12 No. 15. These circumstances are common among prisoners filing civil rights cases and, thus, are
13 not extraordinary. Furthermore, a review of Plaintiff's filings to date reflects an adequate ability
14 to articulate on his own. Finally, as to the merits, the Court has ordered Plaintiff to file an
15 amended complaint because it found Plaintiff's original claim deficient. It is thus impossible to
16 say that Plaintiff has established a likelihood that he will succeed on the merits

17 Accordingly, IT IS HEREBY ORDERED that Plaintiff's request for the
18 appointment of counsel, ECF No. 15, is denied.

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20 Dated: January 5, 2022



DENNIS M. COTA
UNITED STATES MAGISTRATE JUDGE

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